

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GABRIEL JOSE PENA,

Plaintiff,

ADOPTION ORDER  
21-CV-2496(JS) (JMW)

-against-

SUFFOLK COUNTY POLICE DEPARTMENT,  
CHRISTIAN DEMERS, and MICHELLE  
KNUDSEN,

Defendants.

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APPEARANCES

For Plaintiff: Gabriel Jose Pena, pro se  
620029  
22 Judith Drive  
Coram, New York 11727

For Defendants: Stacy A. Skorupa, Esq.  
Suffolk County Department of Law  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
Hauppauge, New York 11788

SEYBERT, District Judge:

Pending before the Court is the sua sponte Report and Recommendation ("R&R") by the Honorable James M. Wicks, which recommends that this action be dismissed pursuant to Federal Rule of Civil Procedure ("Rule") 41(b) because pro se plaintiff Gabriel Jose Pena ("Plaintiff") has failed to prosecute this action and failed to comply with Court orders. (See R&R, ECF No. 31.)

In his R&R, Judge Wicks notes that after Plaintiff filed his Complaint and application to proceed in forma pauperis, Plaintiff's participation in this action was limited to his

attendance of the Initial Conference on March 4, 2022. (Id. at 2.) Thereafter, Plaintiff's intentions to prosecute this case clearly dissipated. Plaintiff failed to adhere to the discovery schedule implemented during the Initial Conference, failed to communicate with his adversary, and failed to comply with Judge Wicks' orders -- two of which included clear warnings that Plaintiff's non-compliance would result in a recommendation to the undersigned that this case be dismissed. (See id. at 2-3 (citing May 31, 2022 Elec. Order; June 22, 2022 Elec. Order).) As a result, Judge Wicks issued his R&R, recommending that this case be dismissed pursuant to Rule 41(b). (Id. at 3-6 (finding the five-factor test set forth in Baptiste v. Sommers, 768 F.3d 212, 216 (2d Cir. 2014) weighed in favor of dismissal).)

Plaintiff was served with copies of the R&R by certified mail and express mail to his address of record. (See Certificate of Service, ECF No. 32.) The time to object to the R&R has expired and no objections to the R&R have been filed. Upon careful review and consideration, the Court finds Judge Wicks' R&R to be comprehensive, well-reasoned, and free of clear error. As such, the Court ADOPTS the R&R in its entirety.

The Clerk of the Court is respectfully directed to enter judgment accordingly and to mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: November 7, 2022  
Central Islip, New York